



## **Economic Impact Analysis Virginia Department of Planning and Budget**

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### **12 VAC 35-115 –Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Department of Mental Health, Mental Retardation and Substance Abuse Services December 2, 2005**

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

### **Summary of the Proposed Regulation**

The majority of the proposed regulations will incorporate the recent changes in federal and state laws, reformat the sections to improve readability, and clarify some of the current requirements. Another proposed change will discontinue the use of isolated time out as a treatment technique. Finally, another proposed change will establish a procedure for temporary variances.

### **Estimated Economic Impact**

These regulations establish the rights of individuals receiving services from providers of the Department of Mental Health, Mental Retardation and Substance Abuse Services (the department). The department oversees the provision of services to approximately 200,000 patients in a year. In 2003, the department received a total of 2,286 abuse allegations and 1,132 human right complaints. Of the abuse allegations received, 385 were founded.

The majority of the proposed changes include incorporation of the requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), incorporation of the changes resulted from recodification of the title 37.1 of the Code of Virginia, reformatting of sections to improve readability, and clarification of the current requirements already in the regulations. None of these changes are expected to create any significant economic impact other than improving the clarity of the regulations and consequently preventing potential compliance costs that could result from unclear language.

Another proposed change will discontinue the use of isolated time out as a treatment technique. Under Virginia law, isolated time out is considered as seclusion. However, the Centers for Medicare and Medicaid does not allow the use of seclusion. The department proposes to discontinue the use of isolated time out. This proposed change will primarily affect five state facilities. The practice of isolated time out is unevenly distributed among these five facilities. One of the facilities does not utilize the isolated time out treatment technique. Three facilities have used this technique sparsely ranging from two times to 12 times in a year. However, one of the facilities has used this technique about 500 times in a year. Thus, the proposed discontinuation of the isolated time out technique is not expected to create any significant effects on four of the five facilities.

With the proposed change, one facility will have to substitute other treatment techniques for isolated time out. The cost difference between isolated time out technique and other substitute techniques will be the determining factor whether the proposed change will introduce additional costs on the one facility. It appears that isolated time out is a relatively cheaper method of treatment compared to other alternatives. Thus, some additional compliance costs on this facility are anticipated. However, there is no information about the size of potential cost increase.

In addition to the compliance costs, this proposed change may affect the potential risks to the patient as well as to other patients and medical staff. It is possible that the use of isolated time out may be more or less risky than the alternatives available.

The main benefit of the proposed change is to conform to the state law where isolated time out is considered as seclusion and avoid a possible problem with complying with the federal law where seclusion is prohibited.

Finally, another proposed change will establish a procedure for temporary variances. The proposed procedure will allow the facility and the department to quickly respond to events where the enforcement of an existing rule may pose health and safety risks. While there does not appear to be a significant cost associated with this proposed change, the benefits of quickly responding to a risky event could be significant.

As currently proposed, the temporary variance procedure does not have an expiration provision attached to it. Without a sunset provision, a temporary variance may be effective indefinitely which may reduce incentives for regulants to obtain standard variances. By definition, a temporary variance is intended to be used in emergency cases where there is limited time to respond. Thus, including an expiration provision to the proposed temporary variance procedure would avoid unintended consequences and maximize the expected benefits.

### **Businesses and Entities Affected**

The proposed regulations apply to approximately 400 service providers, 16 state facilities, and 200,000 patients receiving services annually.

### **Localities Particularly Affected**

The proposed regulations apply throughout the Commonwealth.

### **Projected Impact on Employment**

The proposed discontinuation of the isolated time out could increase or decrease the medical staff time required to provide care depending on the differential staffing requirements between the isolated time out technique and available substitutes. However, this change is expected to affect only one state facility mainly and the potential impact on labor demand is unlikely to be large enough to have a statewide impact.

### **Effects on the Use and Value of Private Property**

Most of the proposed changes that will affect private providers are editorial and unlikely to have significant impact on the use and value of private property.

**Small Businesses: Costs and Other Effects**

Of the 400 service providers, approximately 300 are estimated to be small businesses. Since the proposed changes affecting service providers are editorial in nature, they are unlikely to create any significant costs or other adverse effects on small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact**

No significant adverse effect is expected on small businesses.